

DAVID D. LAWRENCE, State Bar No. 123039
 dlawrence@lbaclaw.com
 DENNIS M. GONZALES, State Bar No. 59414
 dgonzales@lbaclaw.com
 NATHAN A. OYSTER, State Bar No. 225307
 noyster@lbaclaw.com
 LAWRENCE BEACH ALLEN & CHOI, PC
 100 West Broadway, Suite 1200
 Glendale, California 91210-1219
 Telephone No. (818) 545-1925
 Facsimile No. (818) 545-1937

Attorneys for Defendant
 Burbank Police Department Officer Gunn

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

PRESTON SMITH, an individual;

Plaintiff,

vs.

CITY OF BURBANK; BURBANK
 POLICE DEPARTMENT;
 BURBANK POLICE DEPARTMENT
 OFFICER GUNN; BURBANK
 POLICE DEPARTMENT OFFICER
 BAUMGARTEN; BURBANK
 POLICE DEPARTMENT OFFICER
 EDWARDS; AND DOES 1
 THROUGH 100, INCLUSIVE

Defendants.

Case No. CV 10-8840 VBF (AGR_x)

Honorable Valerie Baker Fairbank

**REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF
 OFFICER GUNN'S MOTION FOR
 JUDGMENT ON THE PLEADINGS**

Date: May 16, 2011

Time: 1:30 p.m.

Courtroom: 9

TO THE CLERK OF THE COURT, ALL INTERESTED PARTIES AND
 THEIR ATTORNEYS OF RECORD:

Defendant OFFICER GUNN (hereinafter "Officer Gunn") respectfully
 requests judicial notice of the following documents, all of which are attached as
 exhibits to this Request for Judicial Notice:

1 1. Exhibit "A" is a true and correct copy of the misdemeanor complaint
2 in *People v. Preston Smith*, LASC Case No. 9BR01353.

3 2. Exhibit "B" is a true and correct copy of the misdemeanor
4 sentencing memorandum in *People v. Preston Smith*, LASC Case No. 9BR01353.

5 3. Exhibit "C" is a true and correct copy of the misdemeanor plea form
6 in *People v. Preston Smith*, LASC Case No. 9BR01353.

7 4. Exhibit "D" is a true and correct copy of the transcript, including the
8 court reporter's certificate, for the April 29, 2009 hearing in *People v. Preston*
9 *Smith*, LASC Case No. 9BR01353, in which Plaintiff pled guilty.

10
11 Dated: April 18, 2011

LAWRENCE BEACH ALLEN & CHOI, PC

12
13
14 By /s/ Nathan A. Oyster
15 Nathan A. Oyster
16 Attorneys for Defendant
17 Burbank Police Department Officer Gunn
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

9ER 01 353

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff

Case No.

vs.

PRESTON LEONARD SMITH

MISDEMEANOR COMPLAINT

Defendant

FILED
LOS ANGELES SUPERIOR COURT

APR 14 2009

JOHN A. CLARKE, CLERK
BY D. CAMACHO, DEPUTY

The undersigned declarant and complainant is informed and believes that

COUNT I

On or about April 10, 2009, in the above-entitled Judicial District, PRESTON LEONARD SMITH did willfully and unlawfully attempt by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer bylaw, or who knowingly resists, by the use of force or violence, such officer in the performance of his duty, a violation of Section 69 of the PENAL CODE of the State of California, a misdemeanor.

COUNT II

On or about April 10, 2009, in the above-entitled Judicial District, PRESTON LEONARD SMITH did willfully and unlawfully resist, delay or obstruct a public officer discharging or attempting to discharge any duty of his office or employment, to wit: RAN FROM OFFICER GUNN DURING LAWFUL DETENTION AND DESPITE ORDERS TO STOP; USED ELBOWS AND HANDS IN A FIST TO STRIKE OFFICER BAUMGARTEN, OFFICER EDWARDS, OFFICER/JOEL, OFFICER RODRIGUEZ AND OFFICER GUNN DURING OFFICERS ATTEMPT TO LAWFULLY RESTRAIN THE DEFENDANT; FLAILED ARMS AND KICKED LEGS WHEN OFFICER

BAUMGARTEN, OFFICER EDWARDS, OFFICER JOEL, OFFICER RODRIGUEZ AND
OFFICER GUNN TRIED TO DETAIN THE DEFENDANT, a violation of Section 148(a)(1) of the
PENAL CODE of the State of California, a misdemeanor. ✓

COUNT III

On or about April 10, 2009, in the above-entitled Judicial District, PRESTON LEONARD SMITH did
willfully and unlawfully use, or be under the influence of a controlled substance, to wit: COCAINE, a
violation of Section 11550(a) of the HEALTH & SAFETY CODE of the State of California, a
misdemeanor. ✓

COUNT IV

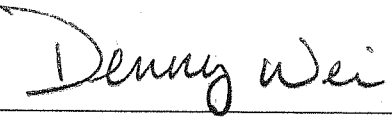
On or about April 10, 2009, in the above-entitled Judicial District, PRESTON LEONARD SMITH did
willfully and unlawfully possess a device, instrument, or paraphernalia designed for injecting or smoking a
controlled substance, a violation of Section 11364 of the HEALTH & SAFETY CODE of the State of
California, a misdemeanor.

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense
counsel provide discovery to the People as required by Penal Code Section 1054.3.

Further, attached hereto and incorporated herein are official reports and documents of a law enforcement
agency which the undersigned believes establish probable cause for the arrest of PRESTON LEONARD
SMITH, for the above-listed crimes

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Burbank, County of Los Angeles, State of California, on April 14, 2009



Declarant and Complainant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

MISDEMEANOR SENTENCING MEMORANDUM - GENERAL MISDEMEANORS

| | |
|------------------------------------------------------------------|-----------------------------|
| Defendant: <u>PRESTON JIM TH</u> | Case No: <u>9920353</u> |
| Date: <u>4/29/09</u> Dept/Div: <u>2</u> Prosecutor: <u>WET</u> | Defense Atty: <u>ZALOW</u> |
| Judge: <u>VELARDE</u> Clerk: <u>ORTIZ</u> Reporter: <u>EVANS</u> | Interpreter/Language: _____ |

Arraignment For Judgment

[] Arraignment for judgment and time for sentencing waived. There is no legal cause why judgment should not now be pronounced.

As to Count 2-7 a violation of § 148 of the [] Penal Code [] H&S Code [] W&I Code [] Veh. Code [] _____ Code

Sentence

1. [] Probation is denied. Defendant is to serve _____ days in the Los Angeles County Jail, forthwith, [] consecutive to _____ [] concurrent _____
 Defendant is to receive credit of _____ days actual plus _____ days GTWT, for a total of _____ days. [] Time may be served in any penal institution
2. [] Pay a fine of \$ _____ plus penalty assessments.
3. [] Pay the fines and assessments as set forth in paragraph 20 below.
4. [] Execution of the foregoing sentence is suspended (ESS), and the following conditional sentence is imposed:

Conditional Sentence (PC §1203b/Order of Probation (PC §1203a))

[] Imposition of sentence is suspended (ISS) [] With supervision by county probation officer (formal probation).

for a period of 2 years/months upon the following terms and conditions:

1. [] Serve 30 days in the Los Angeles County jail. [] consecutive to _____ [] concurrent with _____ [] Suspended.
 Defendant to receive custody credit of 20 days actual plus 10 days GTWT, for a total of _____ days. [] Time may be served in any penal institution.
 [] Time may be served on consecutive weekends of two days each, beginning _____ (772)
 [] Time may be served in any city jail having actual confinement, at the defendant's expense. (021)
 [] Defendant may not participate in Sheriff's home detention/EHM per PCS1203.016(e). (771) [] Work furlough not allowed.
2. [] Perform _____ days of Community Labor (CalTrans, MTA-MAARS, HBT, graffiti removal, beach cleanup, community cleanup, _____ or
 perform _____ days/hours of approved Community Service, with credit for _____ days actual. Sign up for such work only at a court-approved volunteer center or
 in the clerk's office. Failure to complete all court-ordered work without excuse may result in jail. [] This work is in lieu of the days of jail specified in paragraph 1 above
3. [] Pay a fine in the sum of \$ _____ plus penalty assessments, or in default thereof serve _____ additional days in County jail, consecutive, or
 perform _____ days of Community Labor or Community Service. [] Defendant elects jail in lieu of fine, forthwith, consecutive to all other time.
 [] Fine may be paid in monthly installments of not less than \$ _____. (124) [] Defendant to report to Financial Evaluator to work out a fine payment plan. (163)
4. [] Do not own, use or possess dangerous or deadly weapons, including firearms or other concealable weapons. (230) [] The weapon involved in this case is ordered
 confiscated and destroyed by the arresting agency. (234) [] This prohibition is for 10 years as to any firearm pursuant to PC §12021(c)(1). ()
5. [] Do not use or threaten to use force or violence against any person. Do not annoy, harass or molest any victim or witness in this case, especially _____ (913)
6. [] Stay [] _____ [] 100 yards away from and have no contact with _____ (904)
7. [] Stay [] _____ [] 100 yards from [] the location of the arrest [] _____ (904)
8. [] Obey any Protective Order issued in this or any other case. (579) [] Defendant is served with a copy of the Protective Order in open court. (578)
9. [] Enroll within 30 days and successfully complete: _____ (373)
10. [] Do not own, use, or possess any controlled substances, or associated paraphernalia, except with valid prescription, and stay away from places where users, buyers
 or sellers congregate. Do not associate with persons known by you to be controlled substance users or sellers, except while attending a drug treatment program. (926)
11. [] Do not consume or possess any alcoholic beverage and stay out of places where they are the chief item of sale. (901)
 [] Do not consume or possess any alcoholic beverages before you turn age 21. (344)
12. [] Attend _____ Alcoholics / Narcotics / Sexual Compulsives Anonymous meetings at the rate of _____ meeting(s) per week for _____ weeks. (356/473)
13. [] Submit your person and property to search and seizure at any time of the day or night any peace officer, with or without a warrant, probable cause, or reasonable suspicion. (576)
14. [] Use only your true name, stated to be: _____ (924) Do not give any false information to any peace officer at any time. (535)
15. [] Do not associate with any persons known by you to be criminal street gang members, affiliates, or associates, and stay away from all places where you know
 such persons congregate, except in an authorized anti-gang program. (918) Obey any gang injunction that applies to you. (399)
16. [] Do not own, use, possess, buy or attempt to buy, or sell any aerosol paint containers, felt tip markers, any glass or metal scribes, any masonry, glass or carbide drill
 bit, any grinding stone, any awl, chisel, carbide scribe, and any other device or implement capable of marking or marring any property or writing any graffiti. (921)
17. [] Pursuant to VC §13202.6, your driver's license is suspended for one year. (247) You are to surrender your license to the clerk forthwith. (Vandalism cases) (273)
 [] License Surrendered.
8. [] Provide a DNA sample and print impressions pursuant to PC § 296 and 296.1. (790)
9. [] Make restitution to victim _____ pursuant to PC §1202.4(f) (048) [] in an amount to be determined at a hearing. (067)
 [] in the stipulated sum of \$ _____. (048) [] per any final civil judgment against you. (100) [] Liability is admitted but amount is disputed.
10. [] Pay all of the following (check all that apply):
 [] A restitution fine of [] \$ _____ per PC §1202.4(b) through (e). (098)
 [] A probation revocation restitution fine of [] \$ _____ per PC §1202.44, payment is stayed until probation is revoked and sentence imposed.
 [] A crime prevention fine of \$10.00 per PC §1202.5 (PC theft-related and vandalism cases). (ADL SA:CP)
 [] A court security fee of \$20.00 per PC §1465.8(a)(1). (ADL SA:SF)
 [] A sex offender fine of [] \$200.00 (1st offense) [] \$300 (2nd and subsequent offenses) per PC §290.3.
 [] An administrative screening fee of \$25.00 per Gov't Code §29550(f). (If defendant arrested and released by arresting agency.)
 [] A citation processing fee of \$10.00 per Gov't Code §29550(f). (If defendant arrested and cited out by the arresting agency.)
 [] A criminal justice administration reimbursement fee of \$ _____, payable to the local arresting agency, per Gov't Code §29550.1 or Gov't Code §29550.2.

1. [] _____
2. [] Obey all laws and orders of the court (541) [] and rules, regulations and instructions of the Probation Department; (542)
- [] Defendant acknowledges that he/she understands and accepts the foregoing terms and conditions of probation. (821)
- [] Defendant to ordered to pay attorney fees, [] in the amount of \$ _____ [] in the amount determined by the Financial Evaluator.
- Counts/Allegations 1-4 are dismissed/stricken on the People's motion pursuant to Penal Code Section 1385 as to this defendant.

Compliance Dates: Defendant is ordered to appear in person on each of the following compliance dates. (683)

| | |
|-----------------------------------|----------------------------------------|
| Surrender for jail: | POE/ Progress report on: |
| Pay fines/fees by: <u>4/29/10</u> | Restitution Hearing in Div/Dept. _____ |
| Complete work/c-s by: | Other: |

Defendant understands, accepts and agrees to comply with the terms and conditions of this conditional sentence and agrees to return to Court as ordered.

| | |
|------------------------------------------|-----------------------------|
| Defendant's Signature: <u>IN CUSTODY</u> | Attorney's Signature: _____ |
|------------------------------------------|-----------------------------|

Defendant's Address: _____

Defendant's Telephone: _____

JUDGE CARLOS E. VELARDE
 Judge/Commissioner of the Superior Court

EXHIBIT "B"

| | | |
|------------------------------------------------------------|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SUPERIOR COURT OF CALIFORNIA | | Reserved for Clerk's File Stamp FILED LOS ANGELES SUPERIOR COURT APR 29 2009 JOHN A. CLARKE, CLERK BY MICHAEL ORTIZ, DEPUTY CASE NUMBER: 9BRO 1353 DEPARTMENT: |
| COUNTY: | COUNTY OF LOS ANGELES | |
| PLAINTIFF: | PEOPLE OF THE STATE OF CALIFORNIA | |
| DEFENDANT: | <i>Preston Smith</i> | |
| MISDEMEANOR ADVISEMENT OF RIGHTS, WAIVER, AND PLEA FORM | | |

INSTRUCTIONS

Fill out this form if you wish to plead guilty or no contest to the charges against you. Initial the box for each applicable item only if you understand it, and **sign and date the form on page 3**. If you have any questions about your case, the possible sentence, or the information on this form, ask your attorney or the judge.

RIGHT TO AN ATTORNEY

1. I understand that I have the right to be represented by an attorney throughout the proceedings. I understand that the Court will appoint a free attorney for me if I cannot afford to hire one, but at the end of the case, I may be asked to pay all or part of the cost of that attorney, if I can afford to. I understand that there are dangers and disadvantages to giving up my right to an attorney, and that it is almost always unwise to represent myself.

INITIALS ↓

1.

NATURE OF THE CHARGES (Complete all items you are charged with.)

2. I understand that I am charged with the following offense(s):

PLC 146 - resisting arrest, 1451150, under the influence

TYPE OF OFFENSE(S) AND SECTION NUMBER(S)

3. If applicable - I understand that I am also charged with having the following prior conviction(s):

LIST OFFENSE(S); CASE NUMBER(S) AND DATE(S)

4. If applicable - I understand that I am also charged with violating the probation order in the following case(s):

CASE NUMBER(S) AND DATE(S)

5. I understand the charge(s) against me, and the possible pleas and defenses.

CONSTITUTIONAL RIGHTS

6. **RIGHT TO A JURY TRIAL** - I understand that I have the right to a speedy, public jury trial. At the trial, I would be presumed innocent, and I could not be convicted unless 12 impartial jurors were convinced of my guilt beyond a reasonable doubt.
7. **RIGHT TO CONFRONT WITNESSES** - I understand that I have the right to confront and cross-examine all witnesses testifying against me.
8. **RIGHT AGAINST SELF-INCRIMINATION** - I understand that I have the right to remain silent and not incriminate myself, and the right to testify on my own behalf. I understand that by pleading guilty or no contest, or admitting prior conviction(s) or probation violation(s), I am incriminating myself.
9. **RIGHT TO PRODUCE EVIDENCE** - I understand that I have the right to present evidence and to have the Court issue subpoenas to bring into court all witnesses and evidence favorable to me, at no cost to me.

6.

7.

8.

9.

RIGHTS ON CHARGES OF PRIOR CONVICTION(S) AND PROBATION VIOLATION(S)

0. If applicable - I understand that I have the right to an attorney, the right to a jury trial, the right to confront witnesses, the right against self-incrimination, and the right to produce evidence for all the charges against me, including any charged prior conviction(s) or probation violation(s). However, for a charge of violating probation, I do not have the right to a jury trial, although I do have the right to a hearing before a judge.

WAIVER OF RIGHTS

Understanding all this, for all the charges against me, including any prior conviction(s) or probation violation(s):

1. I give up my right to an attorney, and I choose to represent myself. (Does not apply if you have an attorney.)
2. I give up my right to a jury trial.
3. I give up my right to confront and cross-examine witnesses.
4. I give up my right to remain silent and to not incriminate myself.
5. I give up my right to produce evidence and witnesses on my own behalf.

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST

6. **Penalty:** I understand that the possible consequences for the offense(s) charged include the following:

o 9/2/08
SECTION NUMBER

JAIL - MIN.

MAX.

FINE - MIN.

MAX.

OTHER CONSEQUENCES:

o 14291150
SECTION NUMBER

JAIL - MIN.

MAX.

FINE - MIN.

MAX.

OTHER CONSEQUENCES:

o _____
SECTION NUMBER

JAIL - MIN.

MAX.

FINE - MIN.

MAX.

OTHER CONSEQUENCES:

o _____
SECTION NUMBER

JAIL - MIN.

MAX.

FINE - MIN.

MAX.

OTHER CONSEQUENCES:

o _____
SECTION NUMBER

JAIL - MIN.

MAX.

FINE - MIN.

MAX.

OTHER CONSEQUENCES:

o _____
SECTION NUMBER

JAIL - MIN.

MAX.

FINE - MIN.

MAX.

OTHER CONSEQUENCES:

7. I understand that in addition to the fine, the Court will add assessments which will significantly increase the amount I must pay. I will also be ordered to make restitution and to pay a restitution fine of \$100 to \$1,000, unless the Court finds compelling and extraordinary reasons not to impose the fine.

8. I understand that if I am not a citizen, a plea of guilty or no contest could result in my deportation, exclusion from admission to this country, or denial of naturalization.

| INITIALS ↓ | |
|------------|----|
| 10. | X |
| 11. | X |
| 12. | PS |
| 13. | PS |
| 14. | PS |
| 15. | PS |
| 16. | PS |
| 17. | PS |
| 18. | PS |

CONSEQUENCES OF PLEA OF GUILTY OR NO CONTEST (Continued)

19. I understand that a plea of no contest (*nolo contendere*) will have exactly the same effect in this case as a plea of guilty, but it cannot be used against me in a civil lawsuit which is based upon, or growing out of the act upon which the criminal prosecution is based, unless the offense is punishable as a felony.
20. I understand that any plea entered in this case may be grounds for violating probation or parole which has previously been granted to me in any other case.

PLEA(S)

21. I hereby freely and voluntarily plead Guilty to the following:

P/C 148, H+S 11570
GUILTY OR NO CONTEST
LIST CHARGE(S)

22. I understand that I have the right to a delay of from 6 hours to 5 days prior to being sentenced. I give up this right and agree to be sentenced at this time.
23. If applicable - I freely and voluntarily admit the prior conviction(s) I listed on this form. I understand that this admission will increase the penalties which are imposed on me.
24. If applicable - I freely and voluntarily admit the probation violation(s) I listed on this form and give up my right to a hearing before a judge regarding the probation violation(s).
25. If applicable - I understand that I have the right to enter my plea before, and to be sentenced by, a judge. I give up this right and agree to enter my plea before, and to be sentenced by:

 TEMPORARY JUDGE'S NAME

| INITIALS ↓ | |
|------------|----|
| 19. | PS |
| 20. | PS |
| 21. | PS |
| 22. | PS |
| 23. | PS |
| 24. | PS |
| 25. | X |

** DEFENDANT'S SIGNATURE: X [Signature]

DATE: 4/29/08

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have reviewed the form and any addenda with my client. I have explained each of the defendant's rights to the defendant and answered all of the defendant's questions with regard to this plea. I have also discussed the facts of the defendant's case with the defendant, and explained the consequences of this plea, the elements of the offense(s), and the possible defenses. I concur in this plea and in the defendant's decision to waive his or her constitutional rights.

[Signature]
 SIGNATURE OF DEFENDANT'S ATTORNEY

4/29/08
 DATE

INTERPRETER'S STATEMENT (if applicable)

having been sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language indicated below. The defendant stated that (s)he understood the contents of the form, and then (s)he initialed and signed the form.

Language: ☐ Spanish ☐ Other (specify): _____


COURT INTERPRETER'S SIGNATURE

TYPE OR PRINT NAME

DATE

COURT'S FINDINGS AND ORDER

The Court, having reviewed this form and any addenda, and having questioned the defendant concerning the defendant's constitutional rights and the defendant's admission of prior conviction(s) and probation violation(s), if any, finds that the defendant has expressly, knowingly, understandingly and intelligently waived his or her constitutional rights. The Court finds that the defendant's plea(s) and admission(s) are freely and voluntarily made with an understanding of the nature and consequences thereof, and that there is a factual basis for the plea(s). The Court accepts the defendant's plea(s), the defendant's admission of prior conviction(s) and probation violation(s), if any, and orders this form filed and incorporated in the docket by reference as though fully set forth therein.



☒ Judge of the Superior Court
☐ Temporary Judge of the Superior Court



DATE

1
2
3
4
5
6
7
8
9
0

1
2
3
4
5
6
7
3
9
0
1
2
3
4
5
5
7

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NC-2 HON. CARLOS E. VELARDE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

VS.

NO. 9BR01353

PRESTON SMITH,

DEFENDANT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, APRIL 29, 2009

APPEARANCES:

FOR THE PLAINTIFF:

DENNY WEI
DEPUTY CITY ATTORNEY

FOR THE DEFENDANT:

MARK ZAVIDOW
ALTERNATE PUBLIC DEFENDER

COPY

LYNN M. EVANS
OFFICIAL REPORTER
CSR NO. 5164

1 CASE NUMBER: 9BR01353
2 CASE NAME: PEOPLE VS. PRESTON SMITH
3 BURBANK, CA WEDNESDAY, APRIL 29, 2009
4 DEPARTMENT NC-2 HON. CARLOS E. VELARDE, JUDGE
5 COURT REPORTER: LYNN M. EVANS, CSR NO. 5164
6 TIME: 10:09 A.M.
7 --000--
8

9 THE COURT: PRESTON SMITH.

10 MR. ZAVIDOW: IT IS, YOUR HONOR.

11 HE IS PRESENT.

12 THE COURT: COUNSEL, GIVE ME A MOMENT TO PREPARE THE
13 SENTENCING SHEET.

14 MR. ZAVIDOW: THANK YOU.

15 (BRIEF PAUSE.)

16 THE COURT: HOW MANY DAYS HAS HE BEEN IN CUSTODY,
17 COUNSEL? IS THIS A TIME-SERVED SITUATION?

18 MR. ZAVIDOW: IT IS, YOUR HONOR. AND THIS WOULD BE
19 FROM -- SO WE'RE TALKING ABOUT 20 DAYS.

20 THE COURT: TWENTY DAYS ACTUAL.

21 MR. ZAVIDOW: YES.

22 MR. WEI: SO 30.

23 (BRIEF PAUSE.)

24 THE COURT: OKAY. PRESTON SMITH?

25 THE DEFENDANT: YES, SIR.

26 THE COURT: MR. SMITH, I THINK WE HAVE A SETTLEMENT ON
27 YOUR CASE, AND I'D LIKE TO GO OVER THE TERMS OF THE SETTLEMENT
28 SO YOU KNOW EXACTLY WHAT YOU ARE PLEADING TO AND THE

1 CONSEQUENCES OF YOUR PLEA.

2 I'M HOLDING THIS GREEN WAIVER FORM IN MY HAND.
3 ARE THESE YOUR INITIALS AND SIGNATURE ON THIS GREEN FORM?

4 THE DEFENDANT: YES, YOUR HONOR.

5 THE COURT: THAT INDICATES THAT AS PART OF THE
6 SETTLEMENT, YOU ARE GIVING UP CERTAIN CONSTITUTIONAL RIGHTS
7 THAT ARE LISTED IN THIS FORM, IS THAT CORRECT?

8 THE DEFENDANT: YES.

9 THE COURT: AND UNDER THE TERMS OF THE SETTLEMENT,
10 YOU'LL BE PLEADING TO TWO COUNTS. YOU'LL BE PLEADING TO
11 COUNT 2, A VIOLATION OF PENAL CODE SECTION 148(A)(1), THAT YOU
12 DID WILLFULLY RESIST OR DELAY AN OFFICER FROM DISCHARGING HIS
13 DUTIES.

14 AND IN COUNT 3, A VIOLATION OF 11550(A) OF THE
15 HEALTH AND SAFETY CODE, THAT YOU DID WILLFULLY AND UNLAWFULLY
16 USE AND YOU WERE UNDER THE INFLUENCE OF A CONTROLLED
17 SUBSTANCE, TO WIT, COCAINE.

18 DO YOU UNDERSTAND THE NATURE OF THE CHARGES YOU
19 ARE PLEADING TO?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: THEY ARE BOTH MISDEMEANORS?

22 THE DEFENDANT: YES, SIR. YES, YOUR HONOR.

23 THE COURT: IF YOU PLEAD TO THOSE TWO CHARGES, THEN
24 YOU'LL BE PLACED ON SUMMARY PROBATION FOR TWO YEARS. YOU'LL
25 RECEIVE A SENTENCE OF 30 DAYS IN THE COUNTY JAIL; HOWEVER,
26 YOU'LL RECEIVE CREDIT FOR 20 PLUS 10 -- IN OTHER WORDS, TIME
27 SERVED -- AND OTHER STANDARD CONDITIONS OF PROBATION, AND THE
28 CONDITIONS WILL RUN CONCURRENT, THAT'S TO EACH OTHER, AND THEN

1 WE'LL BE DISMISSING THE OTHER CHARGES, THAT'S COUNTS 1 AND 4.
2 DO YOU UNDERSTAND?

3 THE DEFENDANT: YES, YOUR HONOR.

4 THE COURT: AS TO COUNT 2, A VIOLATION OF 148(A)(1) OF
5 THE PENAL CODE, A MISDEMEANOR, HOW DO YOU PLEAD?

6 THE DEFENDANT: GUILTY, YOUR HONOR.

7 THE COURT: AND AS TO COUNT 3, A VIOLATION OF 11550(A)
8 OF THE HEALTH AND SAFETY CODE, ALSO A MISDEMEANOR, HOW DO YOU
9 PLEAD?

10 THE DEFENDANT: NO CONTEST, YOUR HONOR.

11 THE COURT: LET THE RECORD SHOW THE COURT HAVING
12 QUESTIONED THE DEFENDANT CONCERNING HIS CONSTITUTIONAL RIGHTS,
13 WAIVERS, PLEAS AS TO BOTH COUNTS, CONSEQUENCES, THE COURT IS
14 SATISFIED AND WILL ACCEPT THE PLEAS.

15 MR. ZAVIDOW: YES. COUNT 3 IS THE ONE TO WHICH HE
16 PLED NO CONTEST.

17 THE COURT: YES.

18 MR. ZAVIDOW: AND THE COURT COULD AMEND THAT, IF HE
19 WANTS TO, ON THE GREEN SLIP THAT WAS TURNED IN. IT INDICATES
20 GUILTY, GUILTY AS TO COUNT 2.

21 THE COURT: GUILTY AS TO 148.

22 MR. WEI: YOUR HONOR, WE CAN'T. SINCE IT'S ONE WAIVER
23 FORM, HE'LL HAVE TO PLEAD GUILTY TO COUNT 3.

24 THE DEFENDANT: GUILTY, YOUR HONOR.

25 THE COURT: SO WE HAVE GUILTY AS TO BOTH COUNTS,
26 COUNSEL, IS THAT CORRECT?

27 MR. ZAVIDOW: I DON'T BELIEVE THAT THAT'S NECESSARY.
28 I THINK THE COURT COULD ACCEPT HIS ORAL NO CONTEST AND JUST

1 LET IT BE.

2 MR. WEI: I WOULD -- I'M ASKING FOR GUILTY ON BOTH.

3 THE COURT: WE'LL NEED A SECOND WAIVER FORM.

4 MR. ZAVIDOW: OKAY. GUILTY. FINE.

5 THE COURT: GUILTY AS TO BOTH COUNTS, THE RECORD WILL
6 SO INDICATE.

7 IS THE DEFENDANT READY FOR SENTENCING, NO LEGAL
8 CAUSE?

9 MR. ZAVIDOW: YES.

10 THE COURT: THE DEFENDANT HAVING PLED TO COUNTS 2
11 AND 3, VIOLATION OF PENAL CODE SECTION 148(A)(1), AND
12 COUNT 3, HEALTH AND SAFETY CODE SECTION 11550(A), THE SENTENCE
13 OF THE COURT AND THE CONDITIONS RUN CONCURRENT.
14 IMPOSITION OF SENTENCE IS SUSPENDED. HE'S PLACED ON SUMMARY
15 PROBATION FOR TWO YEARS UNDER THE FOLLOWING TERMS AND
16 CONDITIONS:

17 HE'S TO SERVE 30 DAYS IN THE COUNTY JAIL.
18 HE'LL RECEIVE CREDIT FOR 20 PLUS 10; IN OTHER WORDS, TIME
19 SERVED.

20 HE'S NOT TO OWN, USE, POSSESS ANY CONTROLLED
21 SUBSTANCE OR ASSOCIATED PARAPHERNALIA EXCEPT WITH A VALID
22 PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE BUYERS, USERS
23 AND SELLERS CONGREGATE.

24 DO NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO
25 BE CONTROLLED SUBSTANCE ABUSERS OR SELLERS EXCEPT WHILE
26 ATTENDING ANY DRUG TREATMENT PROGRAM.

27 THE DEFENDANT IS ORDERED TO PAY A RESTITUTION
28 FINE OF \$100, A PROBATION REVOCATION RESTITUTION FINE OF \$100.

1 THAT'S STAYED UNLESS PROBATION IS REVOKED. A COURT SECURITY
2 FEE OF \$20. HE'S TO OBEY ALL LAWS AND ORDERS OF THE COURT.

3 DO YOU UNDERSTAND AND ACCEPT THE TERMS AND
4 CONDITIONS OF PROBATION?

5 THE DEFENDANT: YES, YOUR HONOR.

6 THE COURT: IS THERE A MOTION AS TO COUNTS 1 AND 4?

7 MR. WEI: YES. 1385 PER PLEA.

8 THE COURT: GIVE HIM A YEAR TO PAY THE FEES TO THE
9 COURT, COUNSEL?

10 MR. ZAVIDOW: YOUR HONOR, THAT'S FINE.

11 THE COURT: 4-29-10.

12 MR. ZAVIDOW: YOUR HONOR, I DO WANT THE COURT TO KNOW
13 THAT HE'S GOING TO BE IN CUSTODY ON ANOTHER MATTER THAT WILL
14 MAKE IT VIRTUALLY IMPOSSIBLE THAT HE MEETS THAT DEADLINE, BUT
15 I DON'T KNOW WHAT ELSE YOU CAN DO.

16 MR. WEI: WE'LL EXTEND THE DEADLINE, THAT'S THE BEST
17 WAY.

18 HOW LONG WILL HE BE IN CUSTODY?

19 THE COURT: IF HE DOESN'T PAY, IT WILL GO TO CIVIL
20 COLLECTION WITH THE COURT. THERE IS NO FINE, AT LEAST THAT'S
21 MY UNDERSTANDING.

22 MR. ZAVIDOW: OKAY.

23 THE COURT: THAT IS THE SENTENCE OF THE COURT.

24 I GUESS THE ONLY -- NO. STRIKE THAT. HE HAS
25 TIME SERVED.

26 (PROCEEDINGS CONCLUDED.)

27 --000--

28 //

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NC-2

HON. CARLOS E. VELARDE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF,

VS.

PRESTON SMITH,

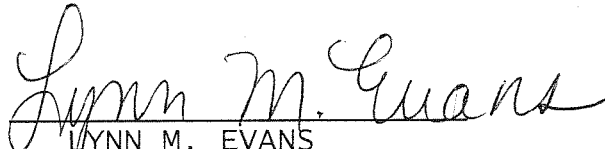
DEFENDANT.

NO. 9BR01353

REPORTER'S
CERTIFICATE

I, LYNN M. EVANS, OFFICIAL REPORTER OF
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
FOREGOING PAGES 1 THROUGH 5, INCLUSIVE, COMPRISE A
FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS
HELD IN THE ABOVE-ENTITLED MATTER ON WEDNESDAY,
APRIL 29, 2009.

28th
DATED THIS ~~28th~~ DAY OF JANUARY, 2011.


LYNN M. EVANS
OFFICIAL REPORTER
CSR NO. 5164, RMR, CRR